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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,921	07/15/2003	John Conan Doyle II	13544.0002.NPUS00	7148
23369	7590	04/13/2006	EXAMINER	
HOWREY LLP C/O IP DOCKETING DEPARTMENT 2941 FAIRVIEW PARK DRIVE, SUITE 200 FALLS CHURCH, VA 22042-7195			SMITH, KIMBERLY S	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/619,921

Applicant(s)

DOYLE, JOHN CONAN

Examiner

Kimberly S. Smith

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8-14, 16-28 and 30-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6, 8-14 and 16-19 is/are allowed.
- 6) ☒ Claim(s) 20, 22-28 and 30-33 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/09/06 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 20-28 and 30-33 have been considered but are moot in view of the new ground(s) of rejection. The Applicant's arguments with respect to claims 1-6, 8-14 and 16-20 as amended have been considered and the arguments are found to be persuasive in view of the Scofield, US 5,483,441 reference with respect to the backlighting and obtaining an image that includes the silhouette of a portion of the lower leg.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 20 and 22, 23, 24, 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Kriesel, US 6,974,373.

Kriesel discloses a means for obtaining an image of a lower portion of at least one leg of the animal (24), a means for determining the approximate standing height of a portion of the animal (26) and a means for determining at least one approximate physical dimension of an animal (42).

Regarding claim 22, Kriesel discloses the means for obtaining the image comprises means for capturing one or more silhouettes of the lower portion of one or more of the legs (as is clearly seen in the Figures, the means for obtaining the image captures the silhouette, i.e. the outline, of the animal).

Regarding claim 23, Kriesel discloses the physical dimension including volume of the animal (reference Table 3-4).

Regarding claim 24, Kriesel discloses a means for determining an approximate distance between at least one pair of legs in the image (reference Table 3-5 disclosing a hip width measurement which is a means for approximating the distance between a pair of legs).

Regarding claim 31, Kriesel discloses means for determining an approximate width of a second portion of the animal (reference Table 3-4).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 25-28 and 30, 32, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kriesel, US Patent 6,974,373.

Regarding claims 25-28, Kriesel discloses the invention substantially as claimed including the collection of 3D data of an animal and a processing means for determining measurements based upon the computed image. However, Kriesel does not positively claim the physical dimensions including the width of at least one leg, the approximate skeletal trunk length from at least two pairs of legs in the image, means for determining first and second midpoints. It would have been obvious to one having ordinary skill in the art at the time the invention was made to extrapolate any given physical dimension of the animal from the device of Kriesel, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Regarding claims 30 and 32, Kriesel discloses the invention substantially as claimed except for positively stating the means for determining the approximate height and approximate width comprises the use of an ultrasound transducer. Kriesel shows that ultrasound is a functional equivalent to known camera technologies (column 44, lines 50-51). Therefore, because these two measuring means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute an optical camera for an ultrasound transducer.

Regarding claim 33, Kriesel discloses the use of magnetic resonance, ultrasound or -ray to yield full volume data (reference column 44, lines 51-53). However, Kriesel does not positively disclose selecting an area on the animal to determine subcutaneous fat. It would have

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been obvious to one having ordinary skill in the art at the time the invention was made to use the processing means as disclosed by Kreisel to determine an area of subcutaneous fat with an ultrasound transducer, since it has been held that where the general conditions of a claim are disclosed in the prior art (i.e. the use of ultrasound transducer for determining full volume data which is inclusive of subcutaneous fat), discovering the optimum or workable ranges involves only routine skill in the art.

*Allowable Subject Matter*

7. Claims 1-6, 8-14 and 16-19 are allowed.

8. Claim 21 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. It is noted that the Examiner has not invoked 35 U.S.C. 112, 6<sup>th</sup> paragraph with respect to claims 20-28 and 30-33.


9. The following is a statement of reasons for the indication of allowable subject matter: With respect to Kriesel, it is disclosed a device as shown in Figure 2-15 having two opposing cameras. Kriesel further discloses the use of an illuminator (30). However, at column 55, lines 39-42 it is clearly stated that the shutter and flash periods are staggered such that the acquisition time for a given camera can only be illuminated by its own flash unit. As such, Kriesel does not disclose a measurement system in which a light source backlights a optical device opposing the light source as the light source opposite the optical device is inactive while the optical device is obtaining the image of a portion of the animal.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Kimberly S Smith  
Examiner  
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